

AN ACT

relating to the sale and production of malt liquor, ale, and beer by the holder of a brewpub license.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The legislature finds that:

(1) the state is authorized under the Twenty-first Amendment of the United States Constitution to promote the public's interest in the fair, efficient, and competitive marketing of malt liquor, ale, and beer in this state;

(2) the United States Supreme Court in Granholm v. Heald, 544 U.S. 460 (2005), has recognized that the three-tier system of regulating the alcoholic beverage industry is unquestionably legitimate;

(3) in Granholm, the United States Supreme Court further recognized that while the states are entitled to regulate the production and sale of liquor within their borders, the right is nonetheless subject to the provisions of the Constitution of the United States, including the Interstate Commerce Clause, and laws regulating the alcoholic beverage industry may not discriminate against out-of-state participants or give undue deference to local participants and may not ignore other provisions of the constitution, including the Supremacy Clause, Commerce Clause, and the Privileges and Immunities Clause with its nondiscriminatory principles;

1           (4) the state is authorized to promote, market, and  
2 educate consumers about the emerging small brewing industry;

3           (5) it is in the state's interest to encourage  
4 entrepreneurial and small business development opportunities in  
5 the state that will lead to new capital investment in the state,  
6 create new jobs in the state, and expand the state and local tax  
7 base; and

8           (6) it is the public policy of the state to exercise  
9 the police power of the state to protect the welfare, health, peace,  
10 temperance, and safety of the people of Texas.

11           SECTION 2. Section 20.01, Alcoholic Beverage Code, is  
12 amended to read as follows:

13           Sec. 20.01. AUTHORIZED ACTIVITIES. The holder of a general  
14 class B wholesaler's permit may:

15           (1) purchase and import malt and vinous liquors from  
16 brewers, wineries, rectifiers, and wine manufacturers and wine  
17 bottlers who are the holders of nonresident seller's permits or  
18 their agents who are holders of manufacturer's agent permits;

19           (2) purchase malt and vinous liquors from holders of  
20 brewer's permits, holders of brewpub licenses, or other wholesalers  
21 in the state;

22           (3) sell the malt and vinous liquors in the original  
23 containers in which they are received to retailers and wholesalers  
24 authorized to sell them in this state, including holders of local  
25 distributor's permits, mixed beverage permits, and daily temporary  
26 mixed beverage permits;

27           (4) sell the malt and vinous liquors to qualified

1 persons outside the state; and

2 (5) sell ale and malt liquor to a holder of a private  
3 club registration permit.

4 SECTION 3. Subsection (a), Section 64.01, Alcoholic  
5 Beverage Code, is amended to read as follows:

6 (a) The holder of a general distributor's license may:

7 (1) receive beer in unbroken original packages from  
8 manufacturers and brewpubs and from general, local, or branch  
9 distributors;

10 (2) distribute or sell beer in the unbroken original  
11 packages in which it is received to general, branch, or local  
12 distributors, to local distributor permittees, to permittees or  
13 licensees authorized to sell to ultimate consumers, to private club  
14 registration permittees, to authorized outlets located on any  
15 installation of the national military establishment, or to  
16 qualified persons for shipment and consumption outside the state;  
17 and

18 (3) serve free beer for consumption on the licensed  
19 premises.

20 SECTION 4. Section 74.03, Alcoholic Beverage Code, is  
21 amended to read as follows:

22 Sec. 74.03. PRODUCTION LIMIT. The total annual production  
23 of malt liquor, ale, and beer by a holder of a brewpub license may  
24 not exceed 10,000 ~~[5,000]~~ barrels for each licensed brewpub  
25 ~~[established, operated, or maintained by the holder in this state]~~.

26 SECTION 5. Chapter 74, Alcoholic Beverage Code, is amended  
27 by adding Sections 74.08, 74.09, 74.10, and 74.11 to read as

1 follows:

2 Sec. 74.08. SALES BY BREWPUB LICENSE HOLDERS TO RETAILERS.

3 (a) In addition to the activities authorized by Section 74.01, the  
4 holder of a brewpub license who holds a wine and beer retailer's  
5 permit and who sells alcoholic beverages manufactured only on the  
6 brewpub's premises may:

7 (1) sell malt liquor or ale produced under the license  
8 to those retailers or qualified persons to whom the holder of a  
9 general class B wholesaler's permit may sell malt liquor or ale  
10 under Section 20.01; and

11 (2) sell beer produced under the license to:

12 (A) those retailers to whom the holder of a  
13 general distributor's license may sell beer under Section 64.01; or

14 (B) qualified persons to whom the holder of a  
15 general distributor's license may sell beer for shipment and  
16 consumption outside the state under Section 64.01.

17 (b) With regard to a sale under Subsection (a)(1), the  
18 holder of a brewpub license has the same authority and is subject to  
19 the same requirements that apply to a sale made by the holder of a  
20 general class B wholesaler's permit.

21 (c) With regard to a sale under Subsection (a)(2), the  
22 holder of a brewpub license has the same authority and is subject to  
23 the same requirements that apply to a sale made by the holder of a  
24 general distributor's license.

25 (d) The total amount of malt liquor, ale, and beer sold  
26 under this section to persons in this state may not exceed 1,000  
27 barrels annually for each licensed brewpub location or 2,500

1 barrels annually for all brewpubs operated by the same licensee.

2 Sec. 74.09. SALES TO DISTRIBUTORS. (a) In addition to the  
3 activities authorized by Section 74.01, the holder of a brewpub  
4 license may sell beer produced under the license to the holder of a  
5 general, local, or branch distributor's license.

6 (b) The holder of a brewpub license who sells beer under  
7 Subsection (a) shall comply with the requirements of Section  
8 102.51.

9 Sec. 74.10. SALES TO WHOLESALERS. (a) In addition to the  
10 activities authorized by Section 74.01, the holder of a brewpub  
11 license may sell ale and malt liquor to the holder of a local class B  
12 wholesaler's permit.

13 (b) The holder of a brewpub license who sells ale or malt  
14 liquor under Subsection (a) shall comply with the requirements of  
15 Section 102.81.

16 Sec. 74.11. REPORT OF SALES TO RETAILERS. (a) Not later  
17 than the 15th day of each month, the holder of a brewpub license  
18 shall file a report with the commission that contains information  
19 relating to the sales made by the brewpub to a retailer during the  
20 preceding calendar month.

21 (b) The commission shall by rule determine the information  
22 that is required to be reported under this section and the manner in  
23 which the report must be submitted to the commission. The  
24 commission may require the report to contain the same information  
25 reported to the comptroller under Section 151.462, Tax Code.

26 SECTION 6. Subdivision (2), Subsection (d), Section 102.54,  
27 Alcoholic Beverage Code, is amended to read as follows:

1           (2) "Manufacturer" means a person who holds a license  
2 issued under Chapter 62, ~~or~~ 63, or 74.

3           SECTION 7. Subsection (a), Section 102.55, Alcoholic  
4 Beverage Code, is amended to read as follows:

5           (a) In this subchapter and Subchapter D, and as the terms  
6 relate to an agreement between a manufacturer and a distributor  
7 describing the sales territory in which a distributor may sell the  
8 beer of a manufacturer:

9           (1) "Brand" means any word, name, group of letters,  
10 symbol, or trademark or a combination of any word, name, group of  
11 letters, symbol, or trademark that is adopted and used by a  
12 manufacturer on a label or on packaging to identify a specific beer  
13 or malt beverage and to distinguish the beer or malt beverage  
14 product from the label or packaging of another beer or malt beverage  
15 produced or marketed by any manufacturer. The term does not include  
16 the name of the manufacturer unless the name of the manufacturer is  
17 included in the name of the brand.

18           (2) "Brand extension" means a brand that incorporates  
19 a brand name or brand logo, or a substantial part of an existing  
20 brand name or brand logo, of the same manufacturer.

21           (3) "Manufacturer" means a person who holds a license  
22 issued under Chapter 62, 63, or 74.

23           SECTION 8. Subdivision (4), Section 102.71, Alcoholic  
24 Beverage Code, is amended to read as follows:

25           (4) "Manufacturer" means those persons licensed under  
26 Section 62.01, ~~or~~ 63.01, or 74.01 ~~[of this code]~~.

27           SECTION 9. Subsection (f), Section 74.01, Alcoholic

1 Beverage Code, is repealed.

2 SECTION 10. (a) Subject to Subsection (b) of this section,  
3 this Act takes effect immediately if it receives a vote of  
4 two-thirds of all the members elected to each house, as provided by  
5 Section 39, Article III, Texas Constitution. If this Act does not  
6 receive the vote necessary for immediate effect, this Act takes  
7 effect September 1, 2013.

8 (b) The changes in law made by this Act take effect only if  
9 each of the following bills is enacted and becomes law:

10 (1) Senate Bill No. 516, House Bill No. 1764, or  
11 another similar bill of the 83rd Legislature, Regular Session,  
12 2013, that allows small brewers to sell ale to retailers;

13 (2) Senate Bill No. 517, House Bill No. 1765, or  
14 another similar bill of the 83rd Legislature, Regular Session,  
15 2013, that allows small beer manufacturers to sell beer to  
16 retailers;

17 (3) Senate Bill No. 518, House Bill No. 1766, or  
18 another similar bill of the 83rd Legislature, Regular Session,  
19 2013, that allows small brewers and beer manufacturers to sell beer  
20 and ale to ultimate consumers; and

21 (4) Senate Bill No. 639, House Bill No. 1538, or  
22 another similar bill of the 83rd Legislature, Regular Session,  
23 2013, relating to sales of beer by a manufacturer to a distributor  
24 and certain agreements between a manufacturer and distributor.

S.B. No. 515

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 515 passed the Senate on March 25, 2013, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 515 passed the House on May 20, 2013, by the following vote: Yeas 139, Nays 5, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor